

Petition No.: 3904

Premises affected: 311 Lowell St

Petitioner: New Cingular

Members: McDonough, Brown, Jeton, Baime

Brown gave background on the scrivener's error on the plans regarding the location of the equipment shelter submitted with the original application. Brown made a motion to reopen the public hearing. Baime seconded the motion & the Board voted (4-0) to reopen the public hearing. Attorney Edward Pare, of Brown, Rudnick, represented the petitioner and gave an overview of the public hearing process to date. Specifically there was an error on Sheet C1 regarding the location of the equipment shelter within the compound. He also noted that they had not previously applied for a variance for the side setback. However, under Section 6.1.2 the Special Permit Granting Authority or ZBA in this case, may allow a lesser setback. Baime recalled that they approved the large shelter & expansion with the understanding that Verizon would be installing their shelter at the outer edge of the expanded area as depicted on New Cingular's plans. The Board noted that a request for a variance from 6.1.2 for the setback was not part of the original application. Pare argued that the ZBA does not need a finding, but has the authority to allow a lesser setback. Baime pointed out that the compound encroaches further into the setback with the installation of New Cingular's equipment shelter. Jeton asked for a copy of the draft decision and made a motion to continue the reopened public hearing to 3/3/11 in order to review the draft decision and receive the revised plans. Baime seconded the motion & the Board voted (4-0). Jeton asked for an extension. Pare agreed.

Petitioner No.: 3912

Premises affected: 204 Andover St

Petitioner: T-Mobile

Members: McDonough (Acting Chair), Brown (Acting Clerk), Jeton, Baime, Matey

Associate Member Matey disclosed that his business office is located at 206 Andover St, but that he felt he could be impartial. There were no objections to his participation in the public hearing. Attorney Slaga summarized Mark Hutchins' peer review of their RF engineer's report stating that Hutchins concluded that there is a gap and that the proposed cupola is a unique proposal to close the gap. Slaga met with the Ballardvale Historic District Commission (BVHDC) earlier this evening and their representatives are present to comment. Jim Sheldon, BVHDC Chair, shared with the ZBA the Commission's views: the original building (circa 1830) didn't have a cupola, but it was added circa 1900, approximately 1970-80's the cupola was added to the building and the proposal fits within the BVHDC guidelines. It should be rebuilt according to the photographic evidence available. Although the Commission hasn't received a formal filing, they are in favor of it in principle. Some questions arose including better screening options for decreased visibility of the panels, what will happen to the cupola when the technology is passé, whether a contract for removal can be a condition of approval, and who would maintain the cupola when T-Mobile is gone? The Board discussed access to the cupola (internal v. external), future maintenance concerns, and safety concerns as related to materials used for the cupola. Attorney Slaga explained that the lease they've entered into with the building owner would have to be amended/altered explaining that it is standard for the applicant to be responsible for maintenance & to remove the equipment at the termination of the lease, possibly including the cupola. She'd have to speak with the landlord regarding future maintenance. Baime suggested continuing the public hearing to the next meeting in order to clarify this issue. Brown & McDonough asked for an extension for the variances, to which Slaga agreed. Slaga asked the Board if they had any questions for Mark Hutchins. There were none. Matey made a motion to continue the hearing to 3/3/11. Brown seconded the motion & the Board voted (5-0) to continue the hearing to 3/3/11. Baime noted that she would not be present.

Petition No.: 3913

Premises affected: 311 Lowell St

Petitioner: Verizon

Attorney Carl Gehring represented. (I have a list of experts if you need any other names, but I don't think any of them actually spoke.) Petitioners are seeking to collocate 12 antennas on a monopole at 80' as well as to install a 12'x30' equipment shelter on grade at 36' from nearest lot line (side/highway). The request is for a special permit section 3.1.3.f.15, 6.1, 9.4 and a variance from 4.1.2, 9.2. The tower was built in '99 by Sprint. Verizon showed propagation maps depicting existing coverage gaps, as well as the increased coverage created by collocating on this tower. Gehring reviewed the detailed packet submitted to the board, including ambient noise report, RF report, simulation photos, and the expansion of the compound to house their shelter. He noted that much of the bylaw requirements do not apply to collocation, i.e. a bond. He spoke about the requested variance from the side setback requirement, noting that section 6.1.2 allows the SPGA the authority to waive the requirement for a setback variance. The Board discussed this requirement applying to towers, but perhaps not to equipment shelters and the probability that the tower setback was granted a variance in a previous decision. Gehring pointed out that the Cingular application that is pending did not apply for a variance for their shelter, but was approved. He also pointed out that there are 3 ways to approve the encroachment, adding that the variance argument would be that this is a unique petition, promotes collocation and that the shape, topography & location of the structures on the lot create a hardship. Further it is not detrimental. There was a motion to close the public hearing. The motion was seconded & the Board voted unanimously to close the hearing. The Board then proceeded to deliberate. The Board discussed whether the setbacks apply only to the tower or to the equipment shelter as well. Jeton pointed out that there are setback requirements in the LS district. Brown noted that they are 30' front, 50' side, but added that he feels section 6.1.2 applies to towers and that the '99 decision granted a special permit for the tower as well as a variance for the setback due to the shape of the lot. Jeton asked if the setback for the shelter would be considered front, side or rear due to the lot shape. Matey felt the logic in the '99 decision is useful in this case. Brown felt it would be a side setback. The Board agreed that a hardship exists related to shape, location near Rt. 93, & topography as outlined by Attorney Gehring. Brown made a motion to grant the special permit for collocation finding that it is not detrimental to the character of the neighborhood, and is in harmony with the bylaw and also to grant a variance from section 4.1.2 to expand the equipment shelter to be closer to the side lot line abutting Rt. 93. Jeton seconded the motion & the Board voted (5-0) to grant the special permit & variance. Brown will write the decision.

There was a motion to adjourn & a second. The Board voted unanimously to adjourn the meeting at 9:40 p.m.